IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 129 of 2007

Date of Decision: 7.12.2007

Shri Subhash Chander

...Appellant

Versus

Commissioner of Income Tax, Rohtak

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Pankaj Jain, Advocate,
for the appellant-assessee.

Mr. Yogesh Putney, Advocate,
for the respondent-revenue.

JUDGMENT

M.M. KUMAR, J.

In this appeal, filed under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), the appellant-assessee has challenged order dated 13.10.2006, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (for brevity, 'the Tribunal'), in ITA No. 111/Chandi/1996, in respect of assessment year 1992-93. It has been claimed that the following substantial questions of law would arise for determination of this Court:-

a) Whether on the true and correct interpretation of provisions of Section 124 of the Income-tax Act, 1961, the Tribunal is justified in upholding the action of assumption of jurisdiction with the Assessing Officer whereas the same vests with the Director General or Chief Commissioner or Commissioner respectively?

b) Whether the order of the Tribunal is against the object of the provisions of the Income-tax Act, 1961, read with beneficial and reasonable rules of interpretation in fiscal statute?

c) Whether the order of the Tribunal is perverse justifying the action of the Assessing Officer by obliterating the administrative decision making process prescribed under Section 124 of the Income-tax Act, 1961?

Brief facts of the case are that the appellant-assessee, who is a businessman in Sirsa (Haryana), was subjected to a survey under Section 133A of the Act, which was conducted at his business premises on 3.2.1992. During the course of survey a cash book for the period 1.4.1991 to 1.2.1992 (D-1), ledgers (D-2 & D-3) and loose papers (D-4) were found. When those documents were compared with the regular books of accounts, it emerged that the appellant-assessee had been making investments, advancing loans and incurring expenditure, which were not found recorded in the regular books of accounts. Accordingly, a notice under Section 142(1) of the Act was

issued to the appellant-assessee on 25.2.1993 requiring him to file the return of income by 15.3.1993. The return was filed on 1.3.1993, declaring loss of Rs. 15,700/-. The return was processed under Section 143(1)(a) of the Act, vide intimation dated 29.3.1993. It is appropriate to mention that no objection with regard to jurisdiction of the Assessing Officer was raised. Later on, the case of the appellant-assessee was selected for scrutiny after obtaining prior approval of the DCIT. After issuance of notices to the appellant-assessee from time to time, the Assessing Officer completed the assessment vide his order dated 13.3.1995, determining the income of the appellant-assessee at Rs. 53,16,730/- as against the returned loss of Rs. 15,700/-. On appeal before the CIT (A), one of the grounds raised was that the order of assessment, dated 13.3.1995, passed by the Assessing Officer was liable to be set aside because it was without jurisdiction. The CIT (A) set aside the assessment order and directed the Assessing Officer to make fresh assessment after affording an opportunity of being heard to the appellant-assessee. In respect of the legal ground concerning jurisdiction raised by the appellant-assessee, the CIT (A) opined that it did not require any adjudication. The appellant-assessee went in appeal before the Tribunal challenging the order of the CIT (A). The argument that the order passed by the Assessing Officer, Sirsa, was without jurisdiction, has been rejected by the Tribunal by placing reliance on Section 124(3) of the Act. The view of the Tribunal is discernible from paras 11 and 12, which reads as under:-

> "11. Though in para 7 of the assessment order the AO

has observed that the assessee has not called in question the jurisdiction of the AO within the period of 30 days of the receipt of notice u/s 142 (1), the assessee had pointed out to note No. 4 appended to the statement of income attached to the return. The AO has not make any mention of the note in the return of income. In fact, in para 6 of the assessment order, the AO has pointed out that assessee had make the request for transfer of the case to Delhi only on 6.9.94. In our considered view, the controversy as to whether the note No. 4 appended to the statement of income was available with the AO or not is purely of academic interest in so far as even on the basis of the contents of the note it cannot be said that the assessee had questioned the jurisdiction of the AO to assess him for assessment year 92-93.

12. Taking the totality of facts and circumstances of the case into consideration and the material on record as also the provisions of section 124, we are of the considered view that the assessment order made by the AO was not without jurisdiction. The assessee neither before the AO nor before any of the appellate authorities has established that the AO did not have jurisdiction to assessee the assessee's case for assessment year 92-93. The

> assessee was carrying on the business at Sirsa not only in the previous year relevant to assessment year under appeal but also at the time of filing of the return of income in response to notice u/s 142 (1). We are of the considered view that the AO was having valid jurisdiction over the assessee's case and that the assessee had at no point of time questioned the jurisdiction of the Assessing Officer in the course of assessment proceedings. We would also like to point out that the AO has given valid reasons for not acceding to the request of the assessee to transfer the case records to the AO at Delhi. We have also elsewhere mentioned in this order that at one point of time the AO had transferred the assessment records to the AO at New Delhi but the same were returned to the AO at Sirsa as no person was found to exist at the address given by the assessee. This is without prejudice to our finding that assessee had never questioned the jurisdiction of the Assessing Officer to make the assessment for assessment year 92-93. The ground of appeal relating to the validity of assessment is accordingly dismissed."

Mr. Pankaj Jain, learned counsel for the appellant-assessee has vehemently argued that under Section 124(4) of the Act the assessee had called in question the jurisdiction of the Assessing

Officer and on that basis the question with regard to jurisdiction should have been determined by the Director General or the Chief Commissioner or the Commissioner. According to the learned counsel the Tribunal or the CIT (A) were not competent to decide the question relating to jurisdiction. His further argument is that it is not a case where the area of assessment had already been changed by transferring the case of the appellant-assessee to the new assessee circle, namely, ACIT-4(3)-cum-New Assessee's Circle, Drum-shape Building, New Delhi. He has maintained that merely because the file was returned back to the department at Sirsa, would not constitute a ground for assuming jurisdiction once again.

Mr. Yogesh Putney, learned counsel for the respondent-revenue has submitted that this is not a case falling under sub-section (4) read with sub-section (2) of Section 124 of the Act. He has maintained that the case falls within the scope of sub-section (3)(b) of Section 124 of the Act. He has, thus, submitted that the aforementioned provisions applies to a case where no return has been filed after the expiry of the time allowed by the notice under Section 142(1) or Section 148 of the Act. Learned counsel has maintained that once in response to notice under Section 142(1), dated 25.2.1993, return was filed on 1.3.1993 before the due date i.e. 15.3.1993, then as per provisions of sub-section (3)(b) of Section 124 of the Act, the assessee was not entitled to call in question the jurisdiction of the Assessing Officer, especially when it is not disputed that the assessee was carrying on his business in Shop No. 62, Nai Mandi, Sirsa.

Having heard learned counsel for the parties at a

considerable length, we find that the questions of law deserve to be answered against the appellant-assessee. It would be appropriate to make a reference to the provisions of Section 124 of the Act, which read as under:-

> "Jurisdiction of Assessing Officer:-
>
> 124.(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-
>
> (a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and
>
> (b) in respect of any other person residing within the area.
>
> (2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors

General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) Where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 11WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (1) of section 142 or under section 148 for the making of the return or by the notice under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgement of the Assessing Officer, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an

> Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.
>
> (5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120."

A perusal of sub-section (3)(b) of Section 124 of the Act shows that the jurisdiction of an Assessing Officer cannot be called in question by an assessee after the expiry of one month from the date of which he was served with a notice under sub-section (1) of Section 142 of the Act or after completion of assessment, which was to be earlier. It is further evident that sub-section (4) of Section 124 has been made subject to the provisions of sub-section (3) in case an assessee has questioned the jurisdiction of an Assessing Officer. It is only in those jurisdiction that the Assessing Officer is to refer the matter for determination to the Director General or the Chief Commissioner or the Commissioner as per the provisions of Section 124(2) of the Act. It is, thus, evident that before the expiry of the period of one month from the date of service of notice under sub-

section (1) of Section 142 of the Act, no right to question the jurisdiction of an Assessing Officer would survive.

In the present case, notice under Section 142(1) of the Act was issued to the appellant-assessee on 25.2.1993 and the return was to be filed on or before 15.3.1993, which, in fact, has been filed on 1.3.1993. No objection to the jurisdiction till 6.9.1994 was raised when the appellant-assessee requested for transfer of the case to Delhi. Therefore, it is not possible to conclude that the Assessing Officer was under obligation to refer the question of jurisdiction to the Director General or Chief Commissioner as per the provisions of Section 124(2) read with Section 124(4) of the Act, as is contended by learned counsel for the appellant-assessee.

We are further of the view that it would not make any difference even if at one stage accounts for assessment year 1992-93 were transferred to New Delhi, which were returned to the Assessing Officer, Sirsa, because there was no effective transfer of record. Moreover, the substantial business in the financial year 1992-93 was transacted at Sirsa. The argument that the record at one stage was transferred and, therefore, the assessment order passed by the Assessing Officer at Sirsa is bad cannot be accepted and we have no hesitation to reject such an argument.

No arguments have been addressed on questions (b) and (c), which would not, in fact, arise. Therefore, no opinion can be expressed on those questions.

For the reasons stated above, this appeal fails. The questions of law are answered against the appellant-assessee and in favour of the revenue.

(M.M. KUMAR)
JUDGE

(RAKESH KUMAR JAIN)
December 7, 2007 **JUDGE**
Pkapoor

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